

the Supreme Court Scale has been adopted it is probable that the order was made by consent and the matter not properly argued.

In the case of *re Ismail A. Rabim*, Bankruptcy No. 150 of 1930, an issue was directed and tried before Thorne J. and costs were allowed on the Supreme Court Scale, but in that case there had been a previous order "that the matter be proceeded with as an ordinary civil action." This case is no authority, therefore, for the hearing of a bankruptcy motion where no such order has been made.

Admittedly the bankruptcy scale is out of date and inadequate and could no doubt be altered with advantage, but so long as the present Rules remain in force it is with rare exceptions the only scale applicable.

The Official Assignee will, therefore, have to pay the first respondent's costs to be taxed on the bankruptcy scale, and the second respondent must also have her costs on the same scale up to the hearing before me when she was not represented by Counsel.

Solicitors for the Official Assignee—

Messrs. Drew & Napier.

Solicitors for the 1st Respondent—

Messrs. Sisson & Delay.

(Appellate Criminal Jurisdiction)

Murison, C.J., Terrell & Whitley, JJ.

February 11, 1933.

REX v. LI KIM POAT & ANOTHER.

(Singapore Magistrate's Appeal No. 76 of 1932)

Ordinance 133 (Betting)—Singapore Turf Club—Members betting on Club premises—Common Betting House—Definition of place.

Held, (by Murison, C. J., Terrell J., Whitley J. dissenting). The Members' Enclosure of the Singapore Turf Club is not a place nor a common betting house within the meaning of Ordinance No. 133 (Betting).

APPEAL from convictions and sentences recorded by a District Court at Singapore, to the Supreme Court, held before a Full Court consisting of Murison C.J., Whitley J., and Terrell J.

The Appellants were convicted by the District Judge on two charges; first, of using a place in front of the totalisator in the Members' Enclosure of the Singapore Turf Club as a common betting house; secondly, of using the place in front of the totalisator in the Members' enclosure at the Singapore Turf Club as a common betting house which place was habitually used for betting; both being offences punishable under S. 3(a) of Ordinance 133 (Betting).

Knowles (Mendis with him) for Appellants.

P. A. McElwaine, K.C. (D.P.P.) for Respondent.

Murison, C.J.—In this appeal the appellants were both convicted of offences against Ordinance No. 133 (Betting).

There were three charges originally, but the convictions were had only upon the first two. These charges were as follows:

That they on or about the 26th day of November, 1932, at Singapore, being the occupier of a certain place, to wit, a place in front of the totalisator in the Members' Enclosure at the Singapore Turf Club did use the place as aforesaid as a common betting house and that they have thereby committed an offence punishable under section 3 (a) of Ordinance 133 (Betting).

Alternatively—

That they on or about the 26th of November, 1932, at Singapore, being the occupier of a certain place, to wit, a place in front of the totalisator in the Members' Enclosure at the Singapore Turf Club did use the place as aforesaid as a common betting house which place was habitually used for betting and that they have thereby committed an offence punishable under section 3 (a) of Ordinance 133 (Betting).

The facts appear to be as follows.

On the 25th and 26th November, 1932 the appellants, who are both members of the Singapore Turf Club, were in the Members' Enclosure of the Club. On the first day there were 8 and on the second day 9 races. No. 1 sat above on the back bench. No. 2 was below. During the race in each case, that is after the bell started, No. 2 handed up slips to No. 1. It is proved that when No. 1 received the slips he put them in an upper pocket and after the race took them out, marked them with a pencil (red for his loss, and blue for his gain) and then put them in a lower pocket. No. 1, when arrested and searched, was found to have seven bundles of these slips in his pocket. He also had the red and blue pencil, and a programme.

No money was seen to pass on these transactions.

There were also found on the appellants a large number of Tote tickets; but no witness saw either appellant putting money on the Tote.

The exact process is not very easy to understand. If the slips, as apparently was the case, were received after the horses had started, the appellant could not afterwards bet on the Tote either on their own or their clients account, for the Tote was closed. That the appellants did bet on the Tote is clear, for Tote tickets were found on them.

The Magistrate finds as a fact that the appellants were carrying on business as bookmakers giving their clients the same odds as the Tote paid. Mr. Knowles for the appellants, had contended that the prosecution must prove affirmatively that money did not go on the Tote and that there was no evidence that the betting

slips entitled the appellants to any money. The magistrate's finding disposes of both these points. As it is in evidence that appellant No. 1 had, when arrested, \$1500 value of Tote tickets on him and slips to the value of \$6925, it is clear that there were transactions between the appellants and their clients which were not covered by any investment on the Tote. For these reasons I think the magistrate's findings were right, for I have no doubt at all that the slips were ordinary book-making bets except that the cash passed after the meeting was closed.

It would further appear that all the persons who gave slips to either of the appellants were members of the Club for there is no evidence to show either that the slips were collected from persons outside the Members' Enclosure or that anybody who was not a member was admitted to the Enclosure.

It, therefore, appears that the action of the appellants amounted to this: that they being members of the Club made bets in the Members' Enclosure with other members of the Club.

I come now to the law.

The substance of the first charge is that the appellants used a place in front of the Totalisator as a common betting house.

The second charge repeats this first charge with the addition of the words "which place" (that is the betting house) "was habitually used for betting"

The definitions of "place" and "betting-house" are important. They are contained in section 2 of the Ordinance:

"Common Betting-House means any place kept or used for betting or wagering on any event or contingency of or relating to any horse race or other race, fight, game, sport or exercise to which the public, or any class of the public has, or may have, access, and any place kept or used for habitual betting or wagering on any such event or contingency as aforesaid, whether the public has or may have access thereto or not;

'Place' means any house, office, room or building and any place or spot, whether open or enclosed, and includes a ship, boat, or other vessel whether afloat or not, and any vehicle."

There is one further matter to look at and that is the long title of the Ordinance. It says that the object of the Ordinance is "To suppress Betting Houses and betting in Public Places." The title of an ordinance can be looked at in deciding the construction and general scope of the Ordinance [See Crais on Statute Law, 7th edition, page 36 and the cases there cited, especially *Fielding v. Morely Corporation*, (1899) 1 Ch. 3 and *Fenton v. Thorley*, (1903) A.C. 447 and *Attorney-General v. Marget Pier*, (1900) 69 L.J. 331] And there is further authority that an Ordinance is not limited by its title [*In the Goods of Gross*, (1904) 73 L.J.P. 82]. I refer to this case later.

Applying the authorities first mentioned above I think it is clear that the word "Place" which the Ordinance defines can refer *prima facie* only to Public Places; for by the title of the Ordinance the Legislature announce that (unless there is something else in the context) that is the only kind of place to which the Ordinance shall apply. It is equally clear, in my opinion, that the Members' Enclosure is not a public place. On the contrary it is a private place; that is, a place for members only. In my opinion the *obiter dictum* to the contrary in *R. v. Chan Ah Tbye and others*, (1889) 4 Kyshe 518 is incorrect.

The definition of "Common betting house" falls into two parts. The first part deals with a place where betting is carried on and the public or any class of the public has access to it. If my view is right that the Turf Club is not a class of the public this part does not involve the appellants in any offence. The second part deals with a place used for habitual betting *whether the public has or has not access thereto*.

These last words conflict with the title of the Ordinance, but the operation of the Ordinance is not limited by its title (*In the Goods of Gross, supra*). The result therefore is that betting, even in a place to which the public have not access, is an offence if the place is habitually used for gaming.

It would appear at first sight that this provision makes it an offence for anyone to play any game anywhere even in one's own private house—with anyone—one's own wife—for any stake however small. It seems hardly possible that the legislature could have contemplated so extraordinary an enactment.

We have been referred to some decisions upon a similar provision in Ordinance No. 45 (Common Gaming Houses). The definition of a Common Gaming House in section 2 is as follows:

"Common gaming house" includes any place kept or used for gaming to which the public or any class of the public has or may have access, and any place kept for habitual gaming, whether the public or any class of the public has or may have access thereto or not, and any place kept or used for the purpose of a public lottery."

It is to be observed that where the words "kept" or "used" occur in Ordinance No. 133 (Betting) only the word "kept" occurs in Ordinance No. 45 (Common Gaming Houses). But the difference does not appear to be very material. The really essential word in both definitions is the word "habitual". This word was explained by Stevens, J. in *R. v. Fong Chong Cheng and others*, (1930) S.S.L.R. 139 (a case on Ordinance No. 45) as referring to a place to which the general public can resort for gaming, or a place which, though barred to the public, is kept or used by the owners or occupiers primarily for gaming. A private residence, he says, does not become a common gaming house because the owner makes a practice of inviting his friends to it to

gamble: nor do the premises of an ordinary social club become a common gaming house merely because the club provides facilities for its members to gamble and some of them habitually use the premises for that purpose.

In principle these remarks, with which I entirely agree, apply to the case before us. The Singapore Turf Club is primarily a *bona fide* club for the sport of horse racing. The sport is the essential: betting is the accident. The fact that many members of the Club go to the races and bet can give us no right (as Grantham, J. said in *Downes v. Johnson*, (1895) 2 Q.B. at page 207) to strain an Act of Parliament which was passed for a different purpose: that is, in our case, for the suppression of common betting or gaming houses, not for the suppression of horse-racing. In *Jenks v. Turpin*, (1884) 13 Q.B.D. 505 a house was kept and used ostensibly as an ordinary social club, but was in reality kept and used for gaming purposes; but that is exactly what is not the case here.

This modified construction of the application of the Ordinance relating to gaming and betting thus has the authority of Stevens, J. in this Colony and of several judges in England. It is further consistent with commonsense; for without such modification we are left in this position that three quarters of the adult population of Singapore are unprosecuted criminals and in future no man could play old-maid with his own wife in his own house for a ten-cent stake without committing a criminal offence.

In my opinion the modified construction to which I have referred is the only construction which can be said to express the intention of the legislature in enacting the two Ordinances concerned.

If this view is correct all the appellants did was, as members of a *bona fide* club, to make bets with other members of that club upon the result of horse-races which were the primary object of the existence of the club. And that, for the reasons I have given, is not an offence within Ordinance No. 133 (Betting).

I ought perhaps to refer to section 15 of Ordinance No. 133 (Betting). It is as follows:—

"The Governor in Council may by notification in the Gazette, either generally or in particular cases exempt from the provisions of this Ordinance the members and officers of any racing club or association in respect of any totalisator or *pari-mutuel* promoted by it solely for its members."

Under this clause the Singapore Turf Club were duly exempted. From this an argument is sought that the purpose of the exemption was to save the Club from being, what it otherwise would have been, a Common Betting House. I do not accept this view. In my opinion the exemption was given, either *ex*

abundanti cautela (for all gaming and betting laws are difficult of construction) or with the object of preventing the totalisator from being considered a factor which might weigh in construing the Turf Club as a club which existed, not mainly for the promotion of sport, but mainly for the opportunity of betting.

In my opinion the convictions were wrong in both cases, and, therefore, I would allow the appeal and quash the convictions and sentences.

Terrell, J.—The accused were charged with using a place in front of the totalisator in the Members' Enclosure at the Singapore Turf Club as a common betting house and were convicted under Section 3 (a) of Ordinance No. 133 (Betting).

As to the facts, the learned District Judge found that the accused, who were members of the Singapore Turf Club, were carrying on a business as book-makers on the Turf Club premises, giving their clients the same odds as the totalisator was paying. There was in my opinion ample evidence to support the learned District Judge's finding. In the absence of evidence to the contrary it must be presumed that the clients with whom the accused were betting were also members of the Club.

The chief difficulty in the case is whether the Ordinance was intended to apply to members of a club who were using the club premises for the purpose of betting.

Considerable assistance in the interpretation of Ordinance No. 133 can be gained from the decisions of the Court upon Ordinance No. 45 (Common Gaming Houses) since the definition of a Common Betting House in Ordinance No. 133 follows the definition of a Common Gaming House in Ordinance No. 45 except for certain minor differences which are not material. The definition of Common Betting House in Section 2 of the Ordinance is as follows:—

'Common Betting House' means any place kept or used for betting or wagering on any event or contingency or relating to any horse-race or other race, fight, game, sport or exercise to which the public or any class of the public has, or may have access, and any place kept or used for habitual betting or wagering on any such event or contingency as aforesaid whether the public has or may have access thereto or not.

It will be seen that the definition falls into two parts;

- (1) a place kept for betting etc. to which the public or any class of the public has or may have access; and
- (2) a place kept or used for habitual betting etc. whether the public has or may have access thereto or not.

Now as regards the first part of the definition there are various decisions as to whether members of a club are "a class of the public" within the meaning of

Ordinance No. 45 (Common Gaming Houses). In *Regina v. Chan Ah Thye & others*, 4 Kyshe, page 518, Wood, Ag. C.J. and Goldney, J. seem to have thought that they were, but as the actual decision went off on another point, namely that upon the night in question the club was proved to have been used only for a private purpose and that upon that night the members of the club did not have access to the club premises, the opinions expressed by the learned judges that members of a club were a class of the public, must be considered as *obiter*.

In my opinion a class of the public means, for example, the members of the Khek community or of the Chetty community, or it might mean the people using a particular railway station at any given moment, or people travelling on a particular ship. It cannot I think mean the members of a club who are not a class of the public as such. In this I am following the opinion of Cox, C.J. in *Rex v. Wong Tuck Pho*, 9 S.S. L.R. page 77. He says at page 78 "It is clear in law that a club in the usual sense of the word does not fall under the operation of the Gaming (*sic*) Ordinance. It is not a common gaming house within the definition given in section 5, because it is not a place to which the public or any class of the public has or may have access, the only persons entitled to access being the members or their guests."

In *Rex v. Fong Chong Cheng & Others*, (1930) S.S.L.R. page 139, Stevens, J. did not deal expressly with this point, but he did so inferentially for he says, "Nor in my opinion do the premises of an ordinary social club become a common gaming house merely because the club provides facilities for its members to gamble and some of them habitually use the premises for that purpose." He is here dealing with the second part of the definition but it is clear that if the members of a club were a class of the public they would have been "using the club premises for gaming" and so would have fallen under the first part of the definition of Common Gaming House.

As regards the second part of the definition, different considerations apply. On this point the question whether the members of a club are or are not a class of the public does not arise, as the definition makes it immaterial whether the public has access or not. The point to be considered is whether the place, in this case part of the enclosure of the Singapore Turf Club, "is kept or used for habitual betting or wagering". On this part of the case the judgment of Stevens, J. in *Rex v. Fong Chong Cheng* provides a valuable authority. Referring to the facts of the case before him where gaming was alleged to have taken place on the premises of a Chinese night club, he says:

"It has first to be observed that in this Colony it is not illegal to play games of chance for

money. But it is illegal to keep a common gaming house, or to game on it, and a common gaming house is either a place to which the general public are able to resort for the purpose of gaming, or a place which, though barred to the public, is kept or used by the owners or occupiers primarily for the purpose of gaming. I say primarily, because I think it is clear that a place does not become a common gaming house merely because gaming habitually occurs in it".

and later he says:

"If that were so no club whose primary object is social intercourse or sport of any description would be within the law if it habitually permitted any of its members to gamble on its premises and provided facilities for so doing."

Now, there can be no doubt that the primary object of the Singapore Turf Club is the sport of horse racing and that betting by members among themselves in the club enclosure is not the primary object of the club but only incidental to its amenities. It would follow therefore, that such betting is not one of the evils aimed at by Ordinance No. 133 (Betting). This view is strengthened by the preamble of the Ordinance which reads "To suppress betting houses and *betting in public places*." The premises of the Turf Club are not a public place, therefore the Ordinance was not directed towards anything that takes place there. It is also to be remarked that the preamble or heading of Ordinance No. 45 is "An Ordinance to suppress Common Gaming Houses" and nothing is said about the suppression of gaming in public, as opposed to private places. The decisions, therefore, on the intention of Ordinance No. 45 apply *a fortiori* to cases under Ordinance No. 133 which is expressly limited to betting in public places. The chief difficulty arises through the very wide terms in which 'place' is defined in section 2 of the Ordinance. There is no doubt, for instance, that if a man set up a betting business at the corner of a street, that would be a 'place' within the meaning of the Ordinance. But I do not think this very wide definition can be applied in the same manner to the Club premises. I certainly think club premises are a 'place', but I do not think that the premises as a whole can be sub-divided into parts consisting of any number of 'places' within the meaning of the Ordinance. If it were otherwise, any social club which had a card room for the convenience of its members would undoubtedly be infringing Ordinance 45 (Common Gaming Houses), because the card room is primarily, or indeed exclusively, used for the purpose of gambling with cards, but as Stevens, J. has said, unless gambling is the primary object of the club, a social club does not become a common gaming house merely because

members have facilities for gaming and habitually use the club for that purpose. If the great majority of the members of the Turf Club, with the connivance of the committee, used the club premises primarily for the purpose of betting among themselves, then it might well be argued that the club existed primarily for betting and not for the sport of horse racing and the Committee and members would all render themselves liable under Section 3 of the Ordinance. But the evidence in the case falls far short of that, and none has suggested that the Turf Club does not precisely exist for horse racing.

It is also to be observed that if the present appellants have committed an offence under Section 3 (a) of the Ordinance, the committee are likewise liable under Section (b), in permitting the appellants to keep a common betting house on the club premises. I think that the behaviour of members is a matter which can and should be dealt with by club rules, and Committees must always bear in mind that if they allow their members to carry on betting in a manner which would be an offence if it were not in the club premises there is the danger that the character of the club might become changed, and it might be possible to prove that the avowed object of the club was not its real object, and that the real object was to commit a breach of the law under the guise of a social or sporting club.

I think also that this is the true reason for the exemption provided by section 15 of the Ordinance. The section reads as follows:—

"The Governor in Council may by notification in the Gazette, either generally or in particular cases exempt from the provisions of this Ordinance the members or officers of any racing club or association in respect of any totalisator or *pari-mutuel* promoted by it solely for its members."

And under its provisions the totalisator of the Singapore Turf Club has in fact been exempted by Gazette Notification.

If the totalisator had not been exempted it may well be argued that a large proportion of the members of the club attend the race meetings for the sole or principal purpose of betting on the totalisator and accordingly, that the principal object of the club is betting and not horse racing, but the argument cannot be applied in the case of a few members who bet among themselves and not through the totalisator, and as I have said above, such a practice is a matter for control by rules so far as it is objectionable and any way is not carried on to such an extent as to alter the whole character of the club.

I would, therefore, allow the appeal and quash the conviction and sentence.

Whitley, J.—I regret that I have come to a different conclusion from that of the learned Chief Justice.

The facts present no difficulty and in my view the evidence establishes a clear case of betting by making a book on each race on two successive Race days. The evidence is considerably stronger than that which has been held to be sufficient in innumerable charges of street betting in England. The suggestion put forward by Mr. Knowles that the facts proved are equally consistent with the view that the appellants were merely putting money on the totalisator to oblige friends is disposed of completely when one scrutinises the exhibits found upon the first appellant when he was searched. The commissions written upon the slips of paper handed to him in no case correspond with the totalisator tickets found in his pockets. The latter are without exception \$50 tickets and which no doubt represent bets on the totalisator by the appellants on their own account for "hedging" or "laying off" purposes.

There is thus a clear case established of members betting with fellow members—I say that because the whole of the evidence relates to what took place within the enclosure reserved for members, and accordingly it must be assumed in the appellants' favour that the slips represented commissions by members.

The evidence establishes further that the 1st Appellant was stationed at the same spot on one of the benches during each of the races on two successive Race Days for the specific purpose of receiving these betting slips and noting up commissions written on the same and that the 2nd Appellant abetted him by bringing the slips to that spot thereby rendering himself under section 114 of the Penal Code guilty as a principal of any offence which 1st Appellant may be held to have committed.

On these facts the appellants were convicted under section 3 (a) of Ordinance 133 (Betting) for that they being the occupiers of this place did use it as a common betting house. It is important to bear in mind that the place which they were charged with using was not the Turf Club premises nor the enclosure but this particular bench within the enclosure.

We are not troubled in this Colony with any of the difficulties which the Courts in England have to contend with in construing the word "place" as we have a definition section which gives, and was clearly designed to give, the word the widest possible meaning. There can be no doubt that the bench in question comes within the definition of "place" in section 2 of the Ordinance.

The next question is whether this place was a Common Betting House within the meaning of the Ordinance. A Common Betting House is defined in section 2 as follows:—

"2. In this Ordinance, unless there is something repugnant in the subject or context,

Common Betting House means any place kept or used for betting or wagering on any event or contingency of or relating to any horse race or other race, fight, game, sport or exercise to which the public, or any class of the public has, or may have access, and any place kept or used for habitual betting or wagering on any such event or contingency as aforesaid, whether the public has or may have access thereto or not."

In my view the first half of this definition cannot apply because only members of the Turf Club had access to the place in question and the members of a club are not the public or a class of the public. In order to bring this place within the second half of the definition the Court must be satisfied that the place in question was "used by the appellants for habitual betting on contingencies relating to horse races". The distinction between the first and second halves of the definition lies in the addition of the word "habitual". If the place is a public one to which the public or a class thereof have access it is only necessary to prove use for betting on one occasion but if it is not public as in the present case it is necessary to prove that it has been so used habitually. There can be no doubt on the evidence that this place was used by them for betting on such contingencies and the fact that it was so used during every race for two days is sufficient to establish that it was so used by them habitually.

It would appear then that in my opinion on a strict reading of sections 2 and 3 the appellants committed the offence charged against them and were properly convicted. But certain very cogent points were raised in the course of the hearing as tending to show that it cannot have been the intention of the Legislature to bring within the Ordinance acts such as those proved against the appellants.

It was urged that the Court may look to the long title of the Ordinance in order to arrive at a conclusion as to its scope and intention and that as the long title states that the object is to suppress Betting Houses and Betting in public places the word "place" in the Ordinance can only refer to public places. With respect however this seems to me to be too narrow a reading. The object is to suppress betting in public places and also in Common Betting Houses and by the definition in section 2 it is clear that a common betting house may be either "a place to which the public have access" i.e. "a public place" or "a place to which the public have not access" which is "a private place" and would include a club. I can see nothing in the long title which would prevent the application of the Ordinance to the facts established in the present case.

The appellants relied strongly on the case of *R. v. Fong Chong Cheng and others*, (1930) S.S.L.R. 139 and as that case has come to be regarded, quite properly in my opinion, as a leading case in the Colony I feel

that I should deal with it rather fully. In that case Stevens, J. concluded his judgment with these words:—

"It would be lamentable if the administration of our law were to give rise to the idea that indulgence in games of chance for money, a common social amusement notoriously practised by all classes becomes penal if practised in a Chinese night club. The real question in issue was whether the premises were devoted exclusively to gambling or whether they were devoted to general social purposes among which games of chance were included and in my opinion the latter proposition is the natural inference to be drawn from the evidence."

With every one of those observations I am in entire agreement but the facts in that case are clearly distinguishable. Ten men were found in a room, four of whom were playing dominoes for money and six not taking part. The 1st accused stated in evidence that he was the tenant of the house, sublet part of it and used the room in question and two others with a kitchen as a mess or small club. The first accused was charged with keeping the premises as a common gaming house and the others with gaming therein. The only evidence adduced by the prosecution was the discovery of the men playing on this occasion with dominoes and money and the discovery of mahjong and cards for games of chance in other rooms the possession of which was not definitely brought home to the accused. This evidence as the learned judge observed raised a presumption under section 14 of Ordinance No. 45 (Common Gaming Houses) under which they were charged. That section is similar to section 9 in the Betting Ordinance which reads:—

"If any documents.....writings.....cards or other articles used as a subject or means of betting or in connection therewith are found in any place entered under this Ordinance or upon any person found therein.....it shall be presumed until the contrary is proved that the place is a common betting house and that the same is so kept and used by the occupier thereof."

To rebut this presumption the accused gave evidence that the mess consisted of 8 members of whom 7 were present with 3 guests, that it was the practice to have supper about midnight; that games for money were frequently played. One member stated that he often went there but rarely gambled and that such messes are common in Singapore. The Magistrate convicted holding that the evidence was not sufficient to rebut the presumption. Stevens, J. quashed the conviction saying that he could see no reason for disbelieving the evidence for the defence. He also observed that a private residence is not a common gaming house because the owner makes a practice of inviting his

friends to gamble and that a social club did not become a common gaming house merely because it provides facilities for its members to gamble and some of them habitually use the premises for that purpose. That is I think an accurate statement of the law and applying it to the particular facts of that case there can be no doubt that no offence was committed. But it does not follow that betting between members on the premises of a club can under no circumstances be illegal. In that case the gaming was merely an incidental amusement countenanced by the club and it was properly held that the club did not by reason thereof become a common gaming house. In the present case it is not suggested that the Singapore Turf Club is a Common Betting House because certain members surreptitiously use a certain portion of the premises habitually and exclusively for betting. That club is a *bona fide* club formed and conducted for the purpose of horse racing. The facilities for betting provided are merely incidental and many members never bet at all. What is suggested is that these two members, not the club, were during those two days using that bench as a common betting house and in my opinion on the particular facts proved they were guilty of that offence. They used that bench habitually, primarily and exclusively for betting and whether that betting was done with members or outsiders or both it seems to me to come within the mischief aimed at by the Ordinance. As Stevens, J. observed the mischief which the law is designed to prevent is the encouragement of gambling by the use of premises either for public gambling or for the special purpose of a gambling saloon and substituting betting for gambling I would apply the same words to the Betting Ordinance. What it really comes to is that the two appellants displaying great astuteness set up their little betting saloon on a small corner of the club's premises and there encouraged betting by accepting commissions on credit a far more dangerous and insidious form of betting than that provided by the totalisator where the bettor must pay cash. Applying the same principles I should be prepared to hold that if on Race Days a member of the Singapore Club were to stand in the hall of the club throughout the afternoon accepting bets on the races from members he would be using the spot as a common betting house and would be punishable under this Ordinance, and similarly that if in a corner of the club another member established a roulette board where he encouraged other members throughout the day to gamble at roulette he would be using that spot as a common gaming house. The card room of a club seems to me to come under an entirely different category for reasons similar to those so clearly set out by Stevens, J. in the judgment I have just referred to.

There remains to be considered the presumption section and the exemption section. I have already

quoted the material part of the former.

It is clearly proved that writings used as a means of betting were found upon the person of the 1st appellant and this section places upon him the burden proving that the place he was using was not a common betting house within the meaning of the law. He adduced no evidence to discharge that burden and his counsel had to rely solely upon admissions as he could extract from the prosecution witnesses and argument based thereon. From what I have already said it follows that in my view the fact that the appellants were betting with members in the club enclosure is not sufficient to rebut the presumption.

I derive support for the view which I have taken from section 15 of the Ordinance which provides that:—

"The Governor in Council may by notification in the Gazette either generally or in particular cases exempt from the provisions of this Ordinance the members and officers of any racing club in respect of any totalisator or *pari-mutuel* promoted by it for its members."

The Singapore Turf Club is so exempted.

This was a new section added to the Ordinance in 1913 after the subsection allowing bookmaking on race courses had been repealed and it would appear that the intention of the Legislature was that thenceforward the only organized betting—even among members—should be such totalisator or *pari mutuel* as should be exempted under the section. It would seem to follow that any other organized betting system such as bookmaking is illegal. If betting however systematised or habitual is legal if it is only between members this section is superfluous because the totalisator is merely a system of betting among members. I cannot believe that is so.

I am accordingly of the opinion that the appellants were properly convicted and I would dismiss the appeals.

Appeal allowed.

Convictions quashed.

(Appellate Civil Jurisdiction)

Murison, C.J., Burton & Whitley, JJ.

March 20, 1933.

IN THE MATTER OF THE PETITION OF THE
STRAITS STEAMSHIP COMPANY LIMITED

Vs.

THE ATTORNEY-GENERAL

(Penang Crown Suit No. 1 of 1932)

Petition of Right—Ordinance No. 125 (Merchant Shipping)—Neglect by shipowner of statutory duty—exemption by Colonial Government in breach of Ordinance—Illegality of exercise of dispensing power.

S. 14 of Ordinance 125 (Merchant Shipping) requires vessels